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DEVELOPMENT AND INTERNATIONAL ECONOMIC COOPERATION:
TRADE AND DEVELOPMENT

Strengthening international organizations in the area of multilateral trade

Progress report by the Secretary-General

I. INTRODUCTION

1. At its forty-sixth session, the General Assembly, in its resolution 46/207 of 20 December 1991, while recalling its resolution 45/201 of 21 December 1990 and taking note of the note by the Secretary-General (A/46/565) concerning institutional developments related to the strengthening of international organizations in the area of multilateral trade, requested the Secretary-General to prepare, for submission to the Assembly at its forty-seventh session, an updated report on this matter, taking into account the outcome of the Uruguay Round of multilateral trade negotiations and the eighth session of the United Nations Conference on Trade and Development (UNCTAD). The General Assembly also urged all Governments and the executive heads of the specialized agencies and other organizations and programmes of the United Nations system to endeavour to present their views to the Secretary-General on the matter.

II. VIEWS OF GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

2. As may be recalled, in 1991 the Secretary-General of UNCTAD, pursuant to General Assembly resolution 45/201, had, on behalf of the Secretary-General of the United Nations, solicited the views of the executive heads of 25 specialized agencies and relevant organizations and programmes of the United Nations system and, as a second step in the exercise, circulated a note

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* A/47/150.

verbale to all Governments inviting their views, so as to enable him to report to the Secretary-General of the United Nations.

3. Sixteen responses were received from the above-mentioned international organizations, which were taken into account in the note prepared by the UNCTAD secretariat and annexed to the note by the Secretary-General (A/46/565). Since the adoption of resolution 46/207 no further replies from international organizations have been received.

4. The Secretary-General of UNCTAD has received responses to his note verbale from nine Governments and the Commission of the European Communities. Most of these responses were brief and of a preliminary character, emphasizing that, given the still unclear situation in the Uruguay Round, the time might not be ripe to define a clear line of action or to draw correct conclusions as to the institutional needs of a global trading system. However, several replies focused on the issue of ensuring complementarity between activities of UNCTAD and the General Agreement on Tariffs and Trade. One of the most detailed responses, that of the Commission of the European Communities, stressed that the roles of GATT and UNCTAD were and should remain complementary: GATT, whether or not transformed into the multilateral trade organization, would remain the forum for the negotiation and administration of contractual arrangements supported by an effecive dispute settlement mechanism; and UNCTAD, for its part, would continue to have an important role of analysis, dialogue, consensus-building and consideration of policy approaches in addition to its other fucntions. In the view of the Commission, it was also essential to maintain adequate coordination between the activities of these two institutions.

III. EIGHTH SESSION OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

5. The eighth session of UNCTAD, held in February 1992, marked a turning-point in the history of this organization with the adoption of a comprehensive document, entitled "A New Partnership for Development: the Cartagena Commitment", which formulated a new international consensus in the area of trade and development. Several of the Conference's decisions have a direct bearing on the issue of strengthening international organizations in the area of multilateral trade. In these decisions, the member Governments decided to revitalize UNCTAD by reforming its intergovernmental machinery and working methods with the aim of effectively addressing the new realities, challenges and opportunities that had come into being in the area of trade and development. The Conference also reaffirmed UNCTAD's mandate and important role as regards the international trading system, and established broad policy objectives of the international community in this area. The Conference also agreed that UNCTAD provided the most appropriate focal point, within the United Nations proper, for the integrated treatment of development and interrelated issues in key areas including trade, finance, investment, services and technology, in the interests of all countries, particularly those of developing countries.

6. In addition, the eighth session set forth a number of new tasks for the organization in this field. In particular, the Secretary-General of UNCTAD was requested to analyse the impact of the Uruguay Round on the international trading system and, in this context, to examine the problems and opportunities the developing countries, as well as the economies in transition in Central and Eastern Europe, face in increasing their participation in international trade in goods and services in the 1990s.

7. More generally, the institutional reform measures adopted by the Conference are expected to contribute to the exercise launched by the General Assembly for the restructuring of the economic and social sectors of the United Nations, while taking into account developments concerning the institutional follow-up of the outcome of the Uruguay Round and the initiative taken by the General Assembly on the strengthening of institutional arrangements in the area of multilateral trade. In this context, the Conference emphasized the functions of UNCTAD with regard to policy analysis, intergovernmental deliberation, consensus-building and negotiation, implementation and follow-up, and technical cooperation. Negotiations were defined as a process of intergovernmental interactions and deliberations, directed at one principal objective, that is, to arrive at implementable commitments. Such negotiations should be the culmination of a dynamic sequence beginning with policy analysis, followed by major efforts at identifying areas of convergence and building consensus. Furthermore, the Conference agreed that on issues where other institutions were vested with the necessary powers of decision or rule-making, UNCTAD should aim at providing constructive approaches, as well as viewpoints, and at generating political impulses on matters within its purview, to be considered by these institutions in accordance with their decision-making powers.

IV. DEVELOPMENTS IN THE URUGUAY ROUND

8. The draft final act embodying the results of the Uruguay Round of multilateral trade negotiations was submitted to participants on 20 December 1991. That document also included, as an integral part, the draft agreement establishing the multilateral trade organization. It may be recalled that the draft agreement is based on the earlier proposals submitted by EEC and Canada, which presented a multilateral trade organization as the most effective and pragmatic mechanism for (a) implementing the results of the Uruguay Round; (b) incorporating the results in services and trade-related aspects of intellectual property rights into the multilateral framework of rights and obligations; (c) introducing amendments to certain GATT articles and some of the Tokyo Round codes; (d) correcting the fragmentation of the GATT legal system; (e) securing "definitive" application of GATT by member countries; and (f) establishing a permanent and solid institutional status for the GATT.

9. In January 1992 a "four-track approach" was adopted for the concluding phase of the Uruguay Round. Within this approach track three consists of work to ensure the legal conformity and internal consistency of the agreements

constituting the draft final act; a legal drafting group was set up for this purpose, which in February-May 1992 worked intensively on the draft multilateral trade organization agreement, and produced three revised texts.

10. The agreement, as contained in the draft final act, consists of a preamble, 16 articles and 4 annexes. Other than references in its preambular paragraphs, it does not incorporate any of the substantive multilateral rules and disciplines (for example, such as non-discrimination, national treatment, etc.) and is of a mainly institutional character. "Multilateral trade agreements" are included as annexes 1 (A, B and C), 2 and 3. 1/ "Plurilateral trade agreements" are included in annex 4; 2/ these latter agreements have not been renegotiated in the Uruguay Round, unlike the other Tokyo Round codes listed in annex 1A. The first group of agreements is expected to have all members as parties and, in fact, the acceptance of these agreements, along with specific schedules of concessions in tariffs and services, is a condition for membership in the multilateral trade organization. On the other hand, annex 4 agreements may have limited membership. In addition, it is envisaged that the multilateral trade organization shall provide the framework for the implementation of any further agreements that may be negotiated and accepted under its auspices and provide the forum for negotiations concerning trade relations of its members.

11. The institutional structure of the multilateral trade organization provides for a ministerial conference, general council (acting also as the dispute settlement body and the trade policy review mechanism), goods council, services council, trade-related aspects of intellectual property rights council, committee on budget, finance and administration, committee on trade and development, and balance-of-payments committee.

12. It will be noted that in its present form the draft multilateral trade organization agreement is silent on the institutional relationship of the organization with the United Nations. However, in the most recent (i.e. third revised) draft, it is stated that its general council "shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the multilateral trade organization". On the other hand, there is also a provision that "the privileges and immunities to be accorded by a member to the officials of the multilateral trade organization and to the representatives of the members shall be based on the provisions concerning privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947". In another provision it is envisaged that the multilateral trade organization agreement "shall, upon its entry into force, be deposited with the Director-General of the multilateral trade organization", and not with the Secretary-General of the United Nations, as was the case with "GATT 1947".

13. In another development, in May 1992 the draft text of "GATT 1993" was submitted as a basis for the legal drafting group's consideration of the multilateral trade organization agreement. "GATT 1993", which is a revised

text of "GATT 1947", would replace the latter and be included in annex 1 of the multilateral trade organization agreement.

14. The participants in the legal drafting group are still facing important outstanding issues concerning the draft multilateral trade organization agreement, the resolution of which is dependent on a general breakthrough in the Uruguay Round. The prospects for the establishment of the multilateral trade organization are unlikely to become clear until the substantive package of the Uruguay Round results is agreed upon.

V. CONCLUSION

15. Taking into account the views expressed by Governments and the still unclear prospects for the conclusion of the Uruguay Round, including its institutional follow-up, it may be advisable to review further this matter at the forty-eighth session of the General Assembly on the basis of an updated report by the Secretary-General on strengthening international organizations in the area of multilateral trade, on the assumption that the Uruguay Round will have been concluded by that time.

Notes

1/ Annex 1A covers: (a) "GATT 1993", which is legally distinct from "GATT 1947", and associated legal instruments, except the Protocol of Provisional Application of "GATT 1947" and the provisions in protocols of accession, relating to provisional application or legislation existing on the date of the protocol; (b) the Tokyo Round codes as they result from the Final Act of the Uruguay Round and their associated legal instruments, except those codes and arrangements found in annex 4, and the new agreements reached in the Uruguay Round (Agreement on Safeguards; Agreement on Trade-Related Aspects of Investment Measures; Agreement on Preshipment Inspection; Agreement on Rules of Origin; Agreement on Agriculture; Agreement on Textiles and Clothing, etc.); annex 1B covers the General Agreement on Trade in Services, and its associated legal instruments; annex 1C covers the Agreement on Trade-Related Aspects of Intellectual Property Rights; annex 2 covers the Integrated Dispute Settlement Understanding; annex 3 covers the Trade Policy Review Mechanism.

2/ Annex 4 covers: (a) the Agreement on Trade in Civil Aircraft; (b) the Agreement on Government Procurement; (c) the International Dairy Arrangement; and (d) the Arrangement Regarding Bovine Meat.